



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of Landlords' Application for Dispute Resolution wherein the Landlords' requested monetary compensation from the Tenant for damage to the rental unit, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on July 3, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord, P.S., testified that this tenancy began December 1, 2016. The Tenant rents a basement suite in the Landlords' home. Monthly rent was \$1,300.00 and the Tenant paid a security deposit in the amount of \$650.00.

The tenancy ended in November of 2017. The parties completed the move out condition inspection report on November 5, 2017. The report indicated that there was oil on the floor in the living room and the master bedroom carpet was dirty and stained. The report further indicated that the Tenant agreed to the Landlords retaining \$150.00 to clean the carpet.

The Landlord stated that the stains in the carpet in the master bedroom could not be removed such that the carpet needed to be replaced. The Landlord testified that the carpet was installed in the rental unit in 2009 such that it was 8 years old when the tenancy ended.

The Landlord further confirmed that after the tenancy ended they discovered that the washing machine cycle button was broken and the rubber seal was damaged causing it to leak. They also discovered that the interior of the dryer was stained with blue ink. He confirmed that these were not noticed at the time of the move out inspection.

The Landlord also stated that he did not notice that the stove top was chipped as it was dirty at the end of the tenancy and the damage wasn't noticed at the time of the inspection.

The Landlord also stated that when he did the inspection the floor boards were oily. After he cleaned them up he could see the damage to the boards.

The Landlord stated that the carpet was cleaned twice and as such the Landlords also claimed the cost of the carpet cleaning in the amount of \$131.25 (an invoice was provided in evidence and which confirmed the Landlords were only charged for the first attempt at cleaning the carpet.) When the stains could not be removed, they were replaced at a cost of \$477.50 (the related invoice was provided in evidence.)

The Landlord stated that they have not replaced the stove top or replaced the floor boards that were damaged because they were not in a financial position to do so and wanted to await the outcome of this hearing.

The Landlord stated that they purchased a new washing machine seal at a cost of \$75.00; he confirmed that he replaced the seal on his own. He also stated that he has not been able to fix the washing machine and it still only has one cycle.

The Landlord confirmed that they have not requested the full cost of repairing all the damage to rental unit as they simply wish to retain the Tenant's security deposit of \$650.00. He noted that the walls and baseboards were also damaged.

In response to the Landlords' claims the Tenant testified as follows. She stated that during the move in condition inspection she noted there was regular wear and tear in the rental unit. She stated that she did cause some staining to the carpet, but some were there when she moved in. She further noted that the carpets were 8 years old. She also noted that the cleaners noted that the carpet was "very worn" in the high traffic areas.

In response to the Landlords' claims regarding the washing machine, the Tenant stated that the Landlords' replaced the washing machine with a used one and she never used any other cycle other than the one it was one, which she believed was the "normal one". She stated that she washed her bedding the night before she left and there was no leaking. She denied causing any damage to the washing machine.

In response to the Landlords' claims regarding damage to the stove top, the Tenant stated that her dad cleaned the stove top with a stove top cleaning and a cotton cloth and there were no scratches at that time.

In response to the Landlords' claims regarding the scratches to the wood floor, the Tenant stated that she noted regular wear and tear on the move in condition inspection and denied causing further damage.

In response to the Landlords' claims regarding the damage to the walls and baseboards the Tenant stated that she noted on the move in condition inspection that there was normal wear and tear as well as the caulking on the shower was loose and falling out. She also noted that the wall damage towards the bathroom was caused by the delivery persons bringing in the washing machine when it was replaced.

The Tenant confirmed that she believes that the Landlords should be able to retain the \$150.00 which was previously agreed upon, and evidenced by the move out condition inspection report.

The Tenant further stated that she was very surprised by the Landlords' claims as the Landlords were very impressed with how clean the rental unit was at the end of the tenancy and shook the Tenant's father's hand and thanked him for how clean the rental was. She noted that her father provided a letter in evidence confirming his experience at the end of the tenancy.

In reply the Landlord submitted as follows: he stated that he did not notice the floors were damaged because of the oil; further he did not expect the carpets would require replacement. He also stated that had the walls been damaged when they moved in the new washer he would have repaired it.

He reiterated that although the costs exceed the security deposit, he simply wishes to retain those funds and will "eat the rest" of the cost.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Accordingly, in the event a landlord is entitled to the amount may be discounted based on the remaining useful life of the particular building element.

At the end of the tenancy the Tenant agreed that the Landlord could retain \$150.00 towards the cost to clean the carpets; the Tenant also confirmed in her testimony that she caused additional staining to the carpets. The Landlords claim the carpets could not be cleaned and required replacement. He testified that the carpet was 8 years old at the time the tenancy ended.

I accept the Landlords' evidence that the carpets could not be cleaned and required replacement. However, *Policy Guideline 40* provides that carpet has a useful life of 10 years such that at the time the tenancy ended the carpets had only two useful years according to *Policy Guideline 40*. Accordingly, I discount the Landlords' claim of \$477.50 by 80% and award him **\$95.50** towards the replacement cost. As the Tenant agreed to reimburse the Landlord the cost to clean the carpets I also award him the **\$131.25** claimed.

The Landlords claim the Tenant damaged the washing machine. The Tenant denies damaging the washing machine and claimed that she never changed the setting from what she understood to be "normal". She also stated that it was purchased second hand during her tenancy. I am unable, based on the evidence before me to reconcile the conflict in the parties' testimony in this regard and therefore find the Landlords have failed to prove the Tenant damaged the washing machine.

As well, I was not provided with any evidence as to the age of the washing machine, which according to *Policy Guideline 40*, has a useful building life of 15 years. Consequently, I am unable, based on the Landlords' evidence, to award them related compensation.

The Landlords claimed that the Tenant chipped the stove. The Landlords further claim that the stove was hidden by baking such that they did not notice the chip when the move out inspection was completed. It is the Landlords' duty to fully inspect the rental unit at the end of the tenancy and I find that had they properly inspected, this damage (had it existed at the end of the tenancy) would have been noticed. I therefore dismiss their claim for related compensation.

The Landlords claimed the Tenant damaged the hardwood flooring. The photos submitted by the Landlord confirm that there was some scratching at the end of the

tenancy. However, notably the move in condition inspection report also indicated that the floor had “regular wear and tear”. I am unable to determine, based on the evidence before me, whether the scratches existed at the time the tenancy began, and were considered “regular wear and tear” or whether they were damaged during the tenancy. Additionally, I was not provided with any evidence as to the estimated cost to repair or replace the flooring, or the age of the existing floor. For these reasons I find the Landlords have not proven their claim for related compensation.

While the blue marks inside the dryer are unsightly, I was not provided with any evidence as to how they affect its functionality, or the value of any loss. As such, I dismiss the Landlords’ claim for compensation for the dryer.

The parties are reminded of the evidentiary value of a condition inspection report as provided in section 21 of the *Residential Tenancy Regulation* which reads as follows:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

As such, the parties must thoroughly inspect the rental unit at the beginning and end of the tenancy and accurately and carefully record the condition of the rental unit at the time of inspection.

As the Landlords have been partially successful in their claim I award them one half of the filing fee for a total of **\$50.00**.

Conclusion

The Landlords are awarded monetary compensation in the amount of **\$276.75** for the \$131.25 cost to clean the carpets, the \$95.50 discounted cost to replace the carpets and one half of the filing fee.

The Landlords may retain the sum of \$276.75 from the Tenant’s security deposit and must return the balance of \$373.25 to the Tenant.

The Tenant is granted a monetary order in the amount of **\$373.25**; this Order must be served on the Landlords and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 13, 2018

Residential Tenancy Branch